

## REMARKS

Claims 130-139, 141-152 and 161-171 are pending. Claims 130-139, 141-152 and 161-171 are rejected. Applicants respectfully request reconsideration of the pending rejections based on the following comments.

### **Obviousness-Type Double Patenting Rejections**

#### **A. U.S. Patent Nos. 6,812,219; 7,148,206 and 7,105,493.**

The Examiner has maintained the rejection of the instant claims under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over the claims of U.S. Patent Nos. 6,812,219; 7,148,206; and 7,105,493. Specifically, the Examiner alleges that the terminal disclaimers filed to overcome this rejection are not proper under 37 C.F.R. 1.321(b)(3) because the terminal disclaimers allegedly do not show 100% ownership of the right, title and interest in the instant application. (Office Action, pages 5-7). Applicants respectfully disagree with this rejection and the Examiner's reasoning supporting the rejection. However, solely to promote allowance of the instant application, submitted concurrently herewith are revised terminal disclaimers over U.S. Patent Nos. 6,812,219; 7,148,206; and 7,105,493 for filing in connection with the above-referenced application. The terminal disclaimers state that the owners of the entire interest in the instant application are Idenix Pharmaceuticals, Inc. and Universita Degli Studi Di Cagliari.

Applicants respectfully point out that the filing of a terminal disclaimer is not an admission of the propriety of the rejection. See MPEP § 804.02; *Quad Environmental Technologies Corp. v. Union Sanitary District*, 949 F.2d 870 (Fed Cir. 1991). Applicant respectfully submits that submission of the terminal disclaimers places the application in condition for allowance.

#### **B. Provisional Obviousness-Type Double Patenting Rejections over U.S. Patent Application Nos. 10/609,298; 11/005,443; and 11/005,444.**

The Examiner has maintained the rejection of the instant claims over the claims of U.S. Patent Application Nos. 10/609,298; 11/005,443; and 11/005,444. Applicants respectfully disagree with this rejection and the Examiner's reasoning supporting the rejection.

If provisional obviousness-type double patenting rejections are the only rejections remaining in an earlier filed pending application, the Examiner should withdraw those rejections

and permit the earlier-filed application to issue as a patent without a Terminal Disclaimer.  
Manual of Patent Examination Procedure § 804, subsection I.B.

The filing date of the instant application is June 20, 2003. The filing date of U.S. Patent Application No. 10/609,298 is June 27, 2003. The filing date of U.S. Patent Application Nos. 11/005,443 and 11/005,444 is December 6, 2004. Therefore, because the instant application is the earlier-filed application, and only provisional obviousness-type double patenting rejections remain, Applicants respectfully request that the Examiner withdraw the rejections and allow the instant application to issue as a patent without a Terminal Disclaimer over these applications.

### CONCLUSION

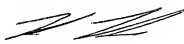
In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The fee for a Request for Continued Examination and an Extension of Time for three months is submitted herewith and will be paid via EFS web. The Commissioner is hereby authorized to charge any addition fees, or credits, deemed necessary to Jones Day Deposit Account No. 503013 (ref. no. 417451-999043).

If the Examiner believes it would be useful to advance prosecution, the Examiner is invited to telephone the undersigned at (858) 314-1200.

Respectfully submitted,

Date: March 27, 2009

  
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